NYSPELRA Newsletter: November 2004

LEGISLATIVE UPDATE

In the past month, the Governor has acted on these bills:

- a November 16 veto of S. 6786 which would have extended what would have amounted to §207-c benefits to State troopers, but only as the result of an amendment which instead of amending §207-c would have added a new section to the Executive Law. Veto No. 272.

- a November 26 signing of S. 6516-A which permits municipal police officers to volunteer services, provided that does not interfere with availability for regular work assignments. Chapter 649.

PERB DECISIONS

The following decisions have been issued by either the Public Employment Relations Board (PERB) or its staff. Any summary that might be of interest should be reviewed as to the facts and circumstances of the case and, if a decision is one by an administrative law judge, reviewed as to whether the decision was appealed to the Board. In some instances, a Board decision may have resulted in litigation. E-mail your editor, John Galligan, at galli14@earthlink.net for a copy of any decision summarized in the event you do not subscribe to the service that publishes the decisions issued by the Board or its staff. Check the PERB web site at www.perb.state.ny.us where summaries of decisions issued since 1986 can be obtained and agency forms can be downloaded.

- for an improper practice charge to be timely filed, it must have been filed within 4 months after the action which forms the basis for the charge. March 3 ALJ decision in NYC Board of Education;
- in general, in union may request and is entitled to receive information which is necessary for the administration of a contract, including the investigation of grievances. The obligation of an employer to respond to such a request is judged by the rules of reasonableness, including the burden on the employer to provide the information, its availability elsewhere The necessity for the information, and its relevancy. Information supplied me not be uniform requested as long as it satisfies a demonstrated need. January 28 ALJ decision in City of Schenectady and February 3 ALJ decision in Town of Evans;
- a demand for extra compensation whenever fewer than a specified number of employees are assigned to a piece of equipment is one which seeks premium pay for hazardous duty, increased safety risks, or increased workload and is consequently a mandatory subject of negotiation. February 9 ALJ decision in City of Niagara Falls;
- a demand will be found to be nonmandatory due to vagueness only when the language of the demand raises the issue of whether it could be read to encompass a nonmandatory subject of bargaining. Where the language of the demand is found to be not specific, but within the boundaries of a mandatory subject of negotiation, the lack of specificity may affect the merits of the proposal, but not the duty to negotiate it. February 9 ALJ decision in City of Niagara Falls;

- when a public employer asserts that it has satisfied its duty to bargain when faced with a bargaining demand, it has the burden of proof to establish that the demand has been negotiated to completion. February 9 ALJ decision in City of Niagara Falls;
- while a contractual recognition clause excluding specific titles from a bargaining unit has been found to be dispositive in a unit clarification proceeding, such that case with a unit placement position. In the latter instance, in Paris is not what the parties may have agreed to, but whether the at issue titles share a community of interest with unit titles. February 11 ALJ decision in Bath Municipal Utility Commission;
- the relationship between a county and its sheriff is one of a joint employer because the sheriff controls significant non-economic terms and conditions of employment and the county controls the economic ones. March 30 interim ALJ decision in Erie County;
- there is no prohibition against a unit of supervisors and supervised employees. Instead, it is the nature and level of the supervisory functions which have always determined whether a mixed unit is the most appropriate. Where supervisors at best exercise mid-level authority, such will be insufficient to exclude them from a unit of subordinates. February 11 ALJ decision in Bath Municipal Utility Commission;
- to be excluded from a bargaining unit as a managerial employee requires that an individual exercise a significant role in collective negotiations, contract administration, or policy formulation. In order to be excluded from a unit as a confidential employees requires that the employee be pretty to information which would possibly be considered confidential. February 11 ALJ decision in Bath Municipal Utility Commission;
- a unit placement petition is a mini-representation proceeding, leading to a nonadversarial investigation and application of the statutory uniting criteria. These petitions are premised on the notion that the at-issue title is not, but should be, in a bargaining unit. To analyze the placement issue, the Board determines whether a community of interest exists between positions in the unit and those sought to be added. It looks to such matters as common lines of supervision, education and training, the professional status of the employees involved, whether there is a shared professional mission and work environment, and salary levels and other benefits. With respect to supervisory authority, that fact alone will not automatically preclude a mixed unit. However, whether there would be an actual or potential conflict of interest may preclude a single unit. February 24 ALJ decision in Manhattan and Bronx Surface Transit Operating Authority;
- an employer has an obligation to provide a union with information that is reasonably required for the purposes of collective bargaining or to assist any administration of a bargaining agreement. Requests for information that are necessary and reasonable to assist a union in representing a unit member in a disciplinary proceeding fall within the scope of contract administration. A failure to provide such information amounts to a violation of subparagraphs a and d of §209-a(1) of the Civil Service Law. No such obligation exists with respect to a request made by an employee. March 1 ALJ decision in NYC Transit Authority;
- that a demand may be unacceptable does not change one's bargaining obligation. April 27 ALJ decision in Village of Huntington Bay;
- it is not until the final stages of the impasse resolution processes provided by the Taylor Law that an improper practice charge, filed due to an insistence upon a nonmandatory or prohibited subject, will be considered by the agency. If there is no objection regarding the negotiability of a demand at the time a petition for factfinding is filed, it is not an improper practice to submit such a demand for consideration by the factfinder. An improper practice, if any, occurs with the presentation of a demand to a factfinder for his or her recommendation over an objection from the other party. Should a party have a concern over the negotiability of some bargaining demand, PERB's rules of procedure permit a petition for a declaratory ruling. March 26 Board decision in State of New York; and
- section 209-a(4)(b) of the Civil Service Law requires the Board to petition for injunctive relief in the Albany County Supreme Court if the Board determines that a charging party has made a

sufficient showing that there is reasonable cause to believe that an improper practice has occurred and that immediate and irreparable injury, loss, or damage will result so as to render a judgment on the merits of the charge ineffectual, requiring a maintenance of or return to the status quo in order to provide the charging party with meaningful relief. The Board has delegated this responsibility to the agency's counsel. Regardless of the disposition of the petition for injunctive relief, it is not a determination on the merits of the charge. June 25 Associate Counsel decision in Eastchester Board of Fire Commissioners; Editor's note: Determinations on such petitions are fact-specific.